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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

2002 JUN 13 P 4: 30 Arizona Corporation Commission

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JUN 13 2002

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IN THE MATTER OF THE COMPLAINT BY
APS ENERGY SERVICES COMPANY, INC.,
AGAINST TUCSON ELECTRIC POWER
COMPANY

Docket No. E-01933A-02-0375

**TUCSON ELECTRIC POWER COMPANY'S
ANSWER TO APS ENERGY SERVICES COMPANY, INC.'S FORMAL COMPLAINT**

Tucson Electric Power Company ("TEP"), through undersigned counsel, hereby answers and responds to the formal complaint filed by APS Energy Services Company, Inc. ("APSES"), as follows:

1. General Response.

The City of Tucson (the "City") is a customer of TEP. The City has hired Tucson District Energy LC ("TDE"), a subsidiary of APSES, to construct a cogeneration facility (the "City's cogeneration facility") that is scheduled to start-up in September 2002. TEP, in good faith, has been negotiating with representatives of TDE the terms and conditions of a special contract by which TEP would provide back-up, supplemental and maintenance service for the City's cogeneration facility. Those negotiations continue to this day.

To TEP's surprise APSES, through its President, filed the formal complaint, which in essence, asks the Commission to set the terms and conditions by which TEP would provide service to the City's cogeneration facility. TEP, admittedly, is at a disadvantage at this point in time in responding to the formal complaint because, absent discovery, it does not know (a) what the relationship is between APSES and the City's cogeneration facility; (b) the promises and representations APSES and TDE made to the City in connection with the construction/

ownership/operation of the cogeneration facility; and (c) the assumptions that APSES and TDE have made in connection with their business plan. One thing is obvious, however, and that is that APSES is seeking to have the Commission intervene in the contract negotiations between TEP and its (potential) customer. In reality, the proper time for the Commission to consider the propriety of the terms and conditions for service to the City's cogeneration facilities is when TEP submits the special contract for approval. For all of the reasons set forth below, the formal complaint should be dismissed.

2. Response to Allegations.

1. Responding to paragraph 1, TEP admits that it provides electricity to the City's central plant but is without knowledge or information about the remaining allegations in the paragraph and, therefore, denies those allegations.

2. TEP does not possess knowledge or information about the allegations in paragraph 2 and, therefore, denies those allegations.

3. TEP has been told that the cogeneration facility may start up "after the first quarter of 2002," but does not possess knowledge or information about the allegations in paragraph 3 and, therefore, denies those allegations.

4. Responding to paragraph 4, TEP denies (APSES) claim that the cogeneration facility and its Thermal Hosts were "designated" by FERC as a single QF of April 10, 2002. TEP affirmatively states that April 10, 2002 is simply the date that a filing for "self-certification" as a single QF was docketed with FERC. Also as an affirmative matter, TEP states that it, and any other party may challenge the "self-certification" at any time it appears that the cogeneration facility does not qualify as a QF. For example if, as alleged in paragraph 3 of the formal complaint, the cogeneration facility serves the load of the Police and Fire Headquarters, that would require the cogeneration facility's distribution lines to cross a public street in violation of the Commission-approved TEP rules and regulations. This would, in fact, be a basis for TEP to challenge the "self-certification" filing.

...

5. Responding to paragraph 5, TEP did receive a copy of the "self-certification" application. TEP's time to oppose the "self-certification" has not expired and TEP has not waived its right to oppose the "self-certification" at some point in the future.

6. Responding to paragraph 6, TEP did receive a copy of the letter attached as Exhibit A to the complaint. The letter speaks for itself, but (a) indicates that the City's cogeneration facility would be commenced "after the first quarter of 2002"; and (b) does not indicate who ultimately will be TEP's customer. TEP responded to the letter and, in good faith, has been negotiating the terms and conditions of a special contract.

7. Responding to paragraph 7, TEP acknowledges that copies of QF tariffs are attached to the formal complaint. As an affirmative matter, TEP states that it has filed an application with the Commission for new tariffs that, if approved, and depending upon the circumstances of the City's cogeneration facility and the terms of a special contract, could be applicable.

8. TEP denies the allegations contained in paragraph 8. As affirmative matters, TEP states that (a) the October 11, 2001 letter was written in response to Mr. Wagner's September 28, 2001 letter; and (b) QF tariffs provide: "The Company may require a written contract and a minimum term of contract."

9. Responding to paragraph 9, TEP admits that it received the October 26, 2001 letter from TDE. As an affirmative matter, TEP states that the October 26, 2001 letter is merely a negotiation tool that contains an incomplete and inaccurate legal analysis concerning TEP's QF tariffs.

10. Responding to paragraph 10, TEP did meet with TDE to discuss terms and conditions of a special contract and denies all remaining allegations of paragraph 10. TEP does not know the identity of "affected parties" as stated by APSES and, therefore, is unable to admit to their presence in meetings. TEP further affirmatively states that (a) the 1999 Settlement Agreement neither freezes nor prohibits the discontinuation of TEP's QF tariff rates; (b) there were no customers on the QF tariffs at the time of the 1999 Settlement Agreement; and (c) TEP

1 offered to negotiate – and is continuing to negotiate a special contract for the City’s cogeneration
2 facility.

3 11. Responding to paragraph 11, TEP denies that it agreed to waive all of the
4 terms and conditions it stated in its October 11, 2001 letter. However, TEP did consider allowing
5 the City’s cogeneration facility to cross a public street with its electric distribution facilities as part
6 of a special contract. TEP denies all remaining allegations in paragraph 11.

7 12. Responding to paragraph 12, TEP states it does not know the scenario
8 contemplated by APSES where “Proposed PRS-13 would result in higher rates to the City and
9 TDE” and, therefore, denies same. As an affirmative matter, TEP states that “QF” and “PRS”
10 tariffs are designed differently and, whether one or the other would result in a higher cost to TDE
11 (or whoever ultimately owns the City’s cogeneration facility) would depend on the operating
12 parameters of the City’s cogeneration facility. As a further affirmative matter, TEP states that the
13 City’s cogeneration facility as it is presently contemplated would not qualify for QF rates.

14 13. Responding to paragraph 13, TEP denies that the City’s cogeneration
15 facility would qualify for QF rates. TEP affirmatively states no agreement has been reached
16 regarding a special contract but that TEP is still negotiating, in good faith, the terms and
17 conditions of a special contract regarding the City’s cogeneration facility.

18 14. Responding to paragraph 14, TEP admits that on May 10, 2002 it filed
19 “Tucson Electric Company’s Application” regarding PRS tariffs. As an affirmative matter, TEP
20 states that the tariffs set forth in the Application provide for greater flexibility in the application of
21 partial service tariffs, particularly in situations where similarly situated distributed generation
22 customers would not meet FERC QF requirements. Moreover, depending on operating
23 parameters, the PRS tariffs may result in lower rates than the QF tariffs. As an additional
24 affirmative matter, TEP states that “QF” and “PRS” tariffs are designed differently and, whether
25 one or the other would result in a higher cost to TDE (or whoever ultimately owns the City’s
26 cogeneration facility) would depend on the operating parameters of the City’s cogeneration
27 facility.

1 15. TEP admits paragraph 15. As an affirmative matter, TEP states that it filed
2 a response to the APSES motion to intervene to clarify misstatements that APESSES made in that
3 motion.

4 16. TEP denies the allegations in paragraph 16. As an affirmative matter, TEP
5 reiterates that TEP has negotiated and continues to negotiate in good faith an appropriate special
6 contract for the City's cogeneration facility.

7 17. TEP denies the allegations in paragraph 17. TEP is unaware of the terms
8 and conditions of any agreements between APSES and/or TDE and the City. TEP submits that
9 any failure, omission or misassumption made in connection with the construction or operation of
10 the City's cogeneration facility was made by parties other than TEP. TEP states, as an affirmative
11 matter, that facilities that may not qualify as "QF facilities", such as the City's Police and Fire
12 headquarters could still be served by TEP as standard offer customers, thus eliminating the threat
13 of "fear for public safety concerns" that APSES now raises.

14 18. Responding to paragraph 18, TEP is unaware of any customer relationship
15 with APSES and has not been informed whether its customer will be TDE or the City and,
16 therefore denies the allegations in paragraph 18. As an affirmative matter, TEP states that it has
17 negotiated and continues to negotiate, in good faith, an appropriate special contract for the City's
18 cogeneration facility. However, TEP is not obligated to set special contract rates or any other
19 tariff rates at a level that will artificially support the business plans of TDE and/or APSES.

20 19. TEP neither admits nor denies paragraph 19.

21 **3. Affirmative Defenses.**

22 TEP states the following affirmative defenses and reserves its right to amend this list
23 dependent upon the outcome of discovery in this case:

- 24 A. APSES lacks standing to bring this formal complaint.
- 25 B. APSES has failed to state a claim upon which relief can be granted.
- 26 C. The claims alleged in this formal complaint are not ripe for determination
- 27 by the Commission.

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- 1 D. APSES has failed to name indispensable parties to this proceeding.
- 2 E. The acts and/or omissions alleged in this formal complaint and that give rise
- 3 to APSES' claim were committed by third parties other than TEP.
- 4 F. Any other affirmative defense that TEP may presently be entitled to or,
- 5 through the discovery process, may be entitled to in the future.

6 WHEREFORE TEP requests that the Commission deny APSES' requests for relief and enter

7 an order dismissing the APSES formal complaint with prejudice.

8

9 RESPECTFULLY SUBMITTED this 13th day of June, 2002.

10 ROSKA HEYMAN & DEWULF, P.L.C.

11

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